

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws. There lies supplemental jurisdiction over Plaintiff's state-law claims because they arise out of the same common nucleus of operative facts as Plaintiff's federal claims asserted herein.

3. This Court may properly maintain personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and Defendant is deemed to reside where it is subjected to personal jurisdiction, rendering Defendant a resident of the Eastern District of Pennsylvania.

PARTIES

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption.

7. Defendant is a corporation engaged in the business of providing full continuum care from detox through aftercare for adults and adolescents suffering from substance abuse, as well as treatment for other mental health disorders. Defendant operates multiple locations and functions nationally.

8. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

FACTUAL BACKGROUND

9. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

10. Plaintiff was hired by Defendant in or about mid-February of 2015.

11. Plaintiff was employed at one of Defendant's many locations, and during her entire period of employment, worked at 53 NW End Avenue, Lancaster, PA 17602.

12. Plaintiff was hired by Defendant for the position of Clinical Supervisor.

13. As a Clinical Supervisor, Plaintiff expected to perform solely management responsibilities as she had been led to believe from Defendant's job listing, interview and hiring representations.

14. Because Plaintiff was hired as a Clinical Supervisor, Plaintiff was categorized by Defendant as an exempt employee who was not paid at a rate of time and one half for all hours worked beyond 40 hours per week.

15. Defendant however operated its business – at least at the location wherein Plaintiff was employed – in a very predatory and exploitive manner. Specifically, it appeared at all times Defendant intentionally understaffed its organization and required employees to work in multiple unexpected capacities often 60-100 hour per week, discarding or terminating them when they were either burned out or opposed mistreatment.

16. In total, Plaintiff was employed with Defendant for approximately nine (9) months.

17. Although Plaintiff was titled Clinical Supervisor upon hire, Defendant was so short staffed that she was required to perform predominantly non-management duties during her entire tenure with Defendant.

18. For the first approximate 7 months of her employment, well over 50% of Plaintiff's job consisted of performing a role of Clinical Technician, a position that requires no licenses, specific education or advanced training.

19. Clinical technicians perform a non-exempt role for Defendant, and are paid overtime compensation. Examples of clinical technician duties consist of tasks such as: doing laundry; changing linens; getting patients and bringing them back and forth to appointments; kitchen responsibilities; janitorial duties; and patient monitoring. The setting of the location wherein Plaintiff was employed was basically in a house, and Clinical technicians perform general made-like, butler, security, and other duties that basically facilitate the living and treatment environment for patients.

20. For Plaintiff's last approximate 2 months of employment, Plaintiff performed almost exclusively Clinical Technician work along with counselor work as a counselor had left the facility and she was required to participate in a counseling role handling approximate 8 cases at a time (whereas previously she had no cases and did not counsel).

21. The counselor whose role Plaintiff was handling and who had previously separated was a non-exempt employee and paid overtime compensation.

22. During Plaintiff's entire period of employment, no more than 10-15% of her job ever consisted of anything that could arguably be management-related (as she did at times participate in hiring, payroll, or scheduling). It was blatantly obvious to employees that Plaintiff

performed a labor role and rarely did anything related to management. *See e.g.* Denise Glover Certification, attached hereto as “Exhibit A.”

23. In the several months of her employment, Plaintiff raised concerns to her management, and in particular, one Carla Coldflesh. Coldflesh was Plaintiff’s primary supervisor, and Coldflesh’s job title was at all relevant times “Program Director.”

24. The concerns Plaintiff raised were that she was: (a) completely overwhelmed; (b) working tremendous hours; (c) since hire being unable to perform a management role; (d) that she was not getting paid overtime despite performing primarily roles entitling overtime; and (e) that she wanted her compensation, including overtime, to properly and promptly be addressed. Complaints of non-payment of overtime are protected activity under the FLSA.

25. As a result of Plaintiff’s complaints as aforesaid, Plaintiff was pretextually admonished and then terminated shortly after returning from a vacation in November of 2015. Her termination was premised on alleged performance concerns but was really motivated by her protected activities, which was followed with antagonism, bogus discipline and temporally proximate termination from employment.

COUNT I

Violations of the Fair Labor Standards Act (“FLSA”) **[Non-payment of overtime & Retaliatory Termination]**

26. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

27. Defendant is a business engaged in interstate commerce and generates gross revenues in excess of \$500,000.00 per year, establishing it as a covered enterprise pursuant to 29 U.S.C. § 203.

28. Plaintiff typically worked a minimum of 60 hours per week and sometimes much more as needed. Plaintiff was never paid at a rate of time and one half for any hours worked beyond 40 hours per week. She consistently worked weekly performing an overwhelming majority of work that was non-exempt under the FLSA.

29. Plaintiff was terminated from Defendant pretextually after expressing concerns of non-payment(s) of overtime compensation for performing non-exempt or non-management roles within Defendant.

30. The non-payment of overtime compensation to Plaintiff and her termination for complaints of non-payment of overtime compensation constitute violations of the FLSA.

COUNT II
Violations of the Pennsylvania Minimum Wage Act ("PMWA")
[Non-payment of overtime compensation]

31. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

32. The PMWA does not have the same retaliation protections as the FLSA, but the requirements to pay overtime and analysis of exemptions is identical (for the purposes of this case).

33. Thus, the non-payment of overtime compensation to Plaintiff constitutes a violation of the PMWA, as set forth in Count I.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.

B. Plaintiff is to be awarded liquidated and/or punitive damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate (including but not limited to damages for emotional distress / pain and suffering);

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

KARPF, KARPf & CERUTTI, P.C.

By: 

Ari R. Karpf, Esq.
3331 Street Road
Two Greenwood Square, Suite 128
Bensalem, PA 19020
(215) 639-0801

Dated: January 19, 2015

EXHIBIT A

CERTIFICATION OF DENISE GLOVER

1. I, Denise Glover, do hereby make the statements in this Certification to the best of my knowledge and recollection. The statements herein are based upon my personal observations and work experience. I understand that my statements in this Certification may be used legal claims, and they are made under penalties of false swearing, under oath and subject to penalties of perjury.

2. I was hired by White Deer Run, Inc. ("WDR") in the timeframe of May 2015. I was employed through part of December 2015. In total, I worked for WDR for approximately 7 months.

3. During my period of employment with WDR, I worked as a Clinical Technician. This is a somewhat glorified job title for someone who performs a lot of labor work. I regularly worked well over 40 hours per week, I was not an exempt employee, and I was paid overtime for hours I worked beyond 40 hours per week.

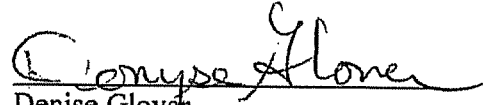
4. My job consisted of performing an array of janitorial responsibilities, doing laundry, changing linens, and doing anything necessary to facilitate patients, which could include observing them, walking them to and from areas, getting food, meeting with them, and many other tasks.

5. From hire through almost the end of my employment, I worked with Earlene McBride. I was personally aware she held the title of Clinical Supervisor. I did not know Ms. McBride prior to becoming employed with WDR.

6. Based upon my observations, Ms. McBride performed very little if any management duties. I worked with and observed her often, as we worked in such a small facility. She regularly filled in as a Clinical Tech and on a daily basis I saw her doing the same job duties

I was performing. I attributed this to us being so short staffed. I also saw her helping others, including counselors as needed.

Date: 1-14-16


Denise Glover

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

EARLENE MCBRIDE

CIVIL ACTION

v.

WHITE DEER RUN, INC.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>1/20/2016</u>	<u>Ari R. Karpf</u>	<u>Plaintiff</u>
Date	Attorney-at-law	Attorney for
<u>(215) 639-0801</u>	<u>(215) 639-4970</u>	<u>akarpf@karpf-law.com</u>
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 342 N. Duke Street, Lancaster, PA 17602

Address of Defendant: 20400 Stevens Creek Blvd., Suite 600, Cupertino, CA 95014

Place of Accident, Incident or Transaction: Defendant's place of business

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☐
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☒ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Ari R. Karpf, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 1/20/2016

Attorney-at-Law

ARK2484

Attorney I.D.# 91538

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/20/2016

Attorney-at-Law

ARK2484

Attorney I.D.# 91538

*JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MCBRIDE, EARLENE

(b) County of Residence of First Listed Plaintiff Lancaster

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Karpf, Karpf & Cerutti, P.C., 3331 Street Road,
Two Greenwood Square, Suite 128, Bensalem,
PA 19020, (215) 639-0801, akarpf@karpf-law.com

DEFENDANTS

WHITE DEER RUN, INC.

County of Residence of First Listed Defendant Santa Clara

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | | |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 650 Airline Regs. | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 660 Occupational Safety/Health | | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | | <input checked="" type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 190 Other Contract | | | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | | | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 196 Franchise | | | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 530 General | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 892 Economic Stabilization Act |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 535 Death Penalty | | | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 462 Naturalization Application | | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee | | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 465 Other Immigration Actions | | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| | <input type="checkbox"/> 440 Other Civil Rights | | | | <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act "FLSA" (29USC201)

Brief description of cause:

Violations of the FLSA and the Pennsylvania Minimum Wage Act "PMWA"

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

1/20/2016

DATE

SIGNATURE OF ATTORNEY OF RECORD

Print

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